

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

JUN 16 1994

RECEIVED  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	MM Docket 92-266
Cable Television Consumer Protection	)	
and Competition Act of 1992;	)	
	)	
Rate Regulation; and	)	MM Docket 93-215
	)	
Adoption of a Uniform Accounting	)	CS Docket 94-28
System for Provision of Regulated	)	
Cable Service	)	

**COMMENTS TO PETITIONS FOR RECONSIDERATION**

GTE Service Corporation, on behalf of its affiliated GTE domestic telephone operating companies (GTE), submits these Comments to the petitions for reconsideration filed in these dockets.

**I. INTRODUCTION.**

In these proceedings, petitions for reconsideration have been filed by Bell Atlantic, Bend Cable Communications, Inc. *et al.*, Cablevision Industries, Inc. (Cablevision), Comcast Cable Communications, Inc. (Comcast), the Commissioner of Baseball, Eternal Word Television Network, Media General of Fairfax County, Inc., the National Association of Telecommunications Officers and Advisors *et al.* (NATOA), Ovation, Inc. and PBS Horizons Cable Network, Dr. Everett C. Parker and Henry Geller, The Times Mirror Co., United Video, and Viacom International, Inc. The specific Commission orders subject to these petitions are *Implementation of Sections of the*

No. of Copies rec'd  
List A B C D E

0413

*Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Dkt. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, FCC 94-38 (Second Recon. Order); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; Buy-Through Prohibition, MM Dkts. 92-266, 92-262, Third Order on Reconsideration, FCC 94-40 (Third Recon. Order); and Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service, MM Dkt. 93-215, CS Dkt. 94-28, Report and Order and Further Notice of Proposed Rulemaking, FCC 94-39 (Cost of Service Order).*

In these Comments, GTE continues to support a simplified, uniform policy for regulating cable services which provides for symmetrical treatment of the converging video and telecommunications marketplaces. Two primary objectives, the efficient allocation of resources and the avoidance of barriers to entry, compel symmetrical regulation and, in particular, refraining from regulating either the voice or video marketplaces in isolation. These petitions for reconsideration and the Commission's pending LEC price cap review<sup>1</sup> provide a remarkable opportunity for the Commission to lay the necessary regulatory framework to support the national information infrastructure. This is not an opportunity to be missed.

---

<sup>1</sup> *Price Cap Performance Review for Local Exchange Carriers, CC Dkt. 94-1.*

**II. DUE TO THE IMPENDING CONVERGENCE OF THE VIDEO AND TELECOMMUNICATIONS MARKETPLACES, IT IS VITAL TO ACHIEVE REGULATORY SYMMETRY.**

With the impending convergence of voice and video technologies, the marketplace for delivery of video programming is ripe for competition. But, today, it is not yet competitive.<sup>2</sup> This, however, is not obstacle, but rather exceptional opportunity to lay the foundation for these converging marketplaces. Specifically, in order to foster competition in these converging marketplaces, it is vital that the price cap rules for cable operators and local exchange carriers be revised in order to establish regulatory parity. To do otherwise would be to establish *de facto* barriers to entry and significantly impede the deployment of the national information infrastructure.

In these proceedings, GTE has repeatedly stressed the importance of crafting a regulatory policy for cable operators which is consistent with that employed for LECs, and vice versa. (E.g., GTE Comments, Jan. 27, 1993; GTE Reply Comments, Feb. 11, 1993.) It is essential, if competition in the voice and video markets is to flourish, that all participants enter on a equal footing. GTE strongly believes that the price cap plan for

---

<sup>2</sup> Today, the delivery of video programming remains a monopoly service. In enacting the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Congress formally found that 99% of all cable television subscribers have only one provider from which to choose. Pub. L. No. 102-385, § 2(a)(2), 106 Stat. 1460; *see also* S. Rep. No. 92, 102d Cong., 1st Sess. 8 (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1141. The Commission is presently exploring the very limited nature of competition in this industry. *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Dkt. 94-48, Notice of Inquiry, FCC 94-119 (released May 19, 1994).

local exchange carriers is in critical need of improvement,<sup>3</sup> and the model established by the Commission for cable operators provides a respectable starting point. Indeed, the dictates of a competitive marketplace require that the price cap rules which govern incumbents also be applied to potential competitors. Consequently, it is imperative that the Commission's evolving regulation of cable operators, as well as local exchange carriers, achieve consistency in all respects.

The most notable disparities in the forms of regulation confronting cable operators and LECs are (1) the suppression of LEC network efficiencies through the imposition of sharing, (2) the constraint of LEC innovation through the use of productivity offsets, and (3) the encumbering of LEC investment in the national information infrastructure through the prescription of depreciation rates. In contrast to these handicaps, rates for cable operators may be adjusted in accordance with changes in inflation but without the exacting of a productivity factor; cable operators are free to earn any level of profits; and the cable industry may set depreciation rates in line with the dictates of the marketplace.

In the Commission's Price Cap Performance Review proceeding, GTE has proposed the elimination of sharing, as well as low end adjustments. (GTE Comments, May 16, 1994, at 67-73.) Sharing and low end adjustments have no place in a pure price cap regulatory model. These features maintain an undesirable and economically inefficient link with cost-of-service regulation. Thus, while the Commission

---

<sup>3</sup> See GTE's Comments, in *Price Cap Performance Review for Local Exchange Carriers*, CC Dkt. 94-1, filed May 9, 1994.

contemporaneously considers GTE's proposals in the Price Cap Performance Review proceeding, in these dockets the Commission should also recognize that if the voice and video industries are to compete with one another, each must have equal incentives to achieve efficiencies and invest the rewards of efficiency gains in network development. Only will this approach insure that the benefits of advanced technologies in both networks result in long term maximum service benefits to consumers.

For example, in applying this principle of symmetrical treatment, regulatory parity dictates that external costs be afforded exogenous treatment consistently under both cable regulation and the LEC price cap plan. LECs may adjust price cap indices for only those costs that are outside the control of the LEC.<sup>4</sup> Many LEC cost increases, such as taxes, have been determined to be incorporated in changes in the broad-based Gross National Product Price Index (GNP-PI).<sup>5</sup> In keeping with symmetrical treatment, the Commission should also conclude that similar cost changes faced by cable operators which are subsumed under the GNP-PI be excluded from cable rates.

*In Summary:* In order to foster competition in the converging voice and video marketplaces, provide for the efficient allocation of resources, avoid establishing barriers to entry and to lay the necessary regulatory framework to support the national information infrastructure, it is vital that in both this proceeding and in the LEC Price

---

<sup>4</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6806-09 (1990) (*LEC Price Cap Order*), *Erratum*, 5 FCC Rcd 7664 (CCB, 1990), *modified on recon.*, 6 FCC Rcd 2637, *aff'd sub nom. National Rural Telecom Assoc. v. Federal Communications Commission*, 988 F.2d 174 (D.C. Cir. 1993).

<sup>5</sup> *Id.*, at 6808 (¶ 176).

Cap Performance Review the Commission achieve symmetrical regulatory treatment of cable operators and local exchange carriers.

**III. THE COMMISSION SHOULD AFFIRM THE BENCHMARK/PRICE CAP METHODOLOGY AS THE PRIMARY REGULATORY TOOL TO GOVERN CABLE RATES.**

Pursuant to the directives of the 1992 Cable Act, the Commission's implementing regulatory framework establishes the benchmark rate approach, with cost of service as a safe harbor, as the primary mechanism to set initial cable rates and uses price cap methodology to govern rate adjustments on an ongoing basis. As the Commission has recognized, a proper price cap regulatory scheme for cable operators provides important incentives for efficiency and diversity while limiting the monopoly pricing practices of the past. *Rate Order*, 8 FCC Rcd at 5777-77 (¶ 228).<sup>6</sup> The Commission has now revised its benchmark rate, the condition precedent for this regulatory design to work. *Second Recon. Order*. With these corrections, cost of service showings should only be used as a "backstop" to accommodate operators with unusually high costs or those that cannot achieve a reasonable rate of return. *Cost of Service Order*, FCC 94-39, at 8 (¶ 10).

Cable industry petitioners (Cablevision at 2 and 7 and Comcast at 11-17) generally seek to relax many of the Commission's cost of service standards. It is

---

<sup>6</sup> *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM dkt. 92-266, Report and Order and Further Notice of Proposed Rulemaking, FCC 93-177, 8 FCC Rcd 5631 (1993) (*Rate Order*).

GTE's position that there is no basis to amend the Commission's newly-instituted cable cost of service rules prior to completion of the Further Notice of Proposed Rulemaking in MM Dkt. 93-215 (FNPRM) since the existing rules provide a more than adequate opportunity for operators to justify the inclusion of any costs in regulated rates. Cable operators are free to rebut presumptively disallowed costs on an individual case basis or in hardship showings, to the extent such operators establish that their costs ultimately benefit subscribers and resulting rates are not above competitive levels. *Cost of Service Order*, FCC 94-39, at 150 (¶ 292). In fact, the hardship rules for cable operators are more lenient than the above-band cost support rules applicable to local exchange carriers under Title II price cap regulation. Under LEC price cap rules, above-band showings have a high probability of suspension for a five month period and are subject to considerable cost support requirements. *LEC Price Cap Order*, 5 FCC Rcd at 6823-24 (¶¶ 303, 304).

GTE objects to the cable industry's attempt to revise these cost of service rules because the cable industry has offered no new evidence to suggest that the price cap/benchmark regulatory framework will not work to achieve the goals of the 1992 Cable Act. Relaxation of the cost of service rules will simply incent cable operators to use cost of service, rather than the benchmark/price cap methodology, as the primary

rate justification tool. This would destroy the underpinnings of price cap regulation for the cable industry.<sup>7</sup>

*In Summary:* Revision of the newly-instituted cost of service rules would only serve to incent cable operators to eschew the benchmark/price cap methodology. This would undermine the Commission's regulatory framework which provides incentives for cable efficiency and diversity but limits the effect of the cable industry's previous monopoly pricing practices.

**IV. A UNITARY 11.25% RATE OF RETURN SHOULD BE MAINTAINED IN COST OF SERVICE SHOWINGS UNTIL THE COMMISSION COMPLETES ITS REVIEW OF CABLE RETURNS IN DOCKET 93-215.**

Comcast (at 18) insists that cable operators be allowed to justify rates of return higher than 11.25% in cost of service showings. Comcast also claims (at 20) that the allowed rate of return does not reflect the financial and risk conditions of the cable industry and should be revised. Both claims are spurious.

The principal tool in assuring reasonable regulated cable rates is the price cap mechanism, with the cost of service showing used only as a safeguard. Under the price cap method, cable operators may conceivably earn returns far greater than 11.25%. The setting of a rate of return component is necessary only to assure that the

---

<sup>7</sup> In its Comments submitted in the Docket 93-215 proceeding, GTE offered the Statement of Dr. Mark Schankerman. Dr. Schankerman recommended that an "earnings floor" adjustment mechanism be adopted to provide an opportunity to file a cost of service based price when a cable operator sustained prolonged substandard earnings. However, Dr. Schankerman noted the importance that such cost of service provisions be highly restricted.



regulatory scheme meets the constitutional requirements of allowing a reasonable return on investment under cost of service submissions. The Commission carefully weighed the comments and data filed in response to the NPRM and concluded a rate of return in the range of 10% to 14% would be reasonable for cable operators. *Cost of Service Order*, FCC 94-39, at 108-09 (¶207). Comcast does not provide any supplemental information that would warrant an change in the rate of return from the 11.25% prescribed by the Commission.

The setting of a final rate of return for the cable industry is the subject of the FNPRM. Simultaneously, the Commission is reviewing possible adjustments to LEC price cap indices in the *Price Cap Performance Review* proceeding. The cable industry, in particular, has recommended both a reduction in the LEC authorized rate of return and a corresponding "one time" rate reduction. (*Price Cap Performance Review, Comments of the California Cable Television Association*, at 5-7 (May 9, 1994).) If the Commission accepts such an imprudent recommendation, corresponding adjustments to cable operator rates are similarly required.

*In Summary:* The 11.25% rate of return set by the Commission for cable operators preserves regulatory parity with the telecommunications industry. The Commission should refrain from adjusting the authorized rate of return at least until the record is complete in the FNPRM.

## **V. CONCLUSION**

Petitioners have submitted no convincing argument that the cost of service rules generally applicable to all operators should be revised or that the benchmark/price cap

rules are inconsistent with the principle of regulatory symmetry. Many issues raised in these petitions, such as rate of return, adoption of a USOA for cable and adjustments to the price cap model, are under consideration in the FNPRM and should be appropriately be addressed in that proceeding rather than in petitions for reconsideration. Nonetheless, to the extent that the Commission considers these petitions, the guiding principle must be to ensure regulatory parity in the converging voice and video markets.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone operating companies

By 

Ward W. Wueste, Jr., HQE03J43

John F. Raposa, HQE03J27

GTE Service Corporation

P.O. Box 152092

Irving, TX 75015-2092

(214) 718-6969

Gail L. Polivy

1850 M Street, N.W.

Suite 1200

Washington, DC 20036

(202) 463-5214

June 16, 1994

Their Attorneys

## **Certificate of Service**

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments to Petitions for Reconsideration" have been mailed by first class United States mail, postage prepaid, on the 16th day of June, 1994 to the following parties:

Wayne Coy, Jr.  
Cohn and Marks  
1333 New Hampshire Avenue, NW  
Suite 600  
Washington, DC 20036

Michael E. Glover  
Bell Atlantic  
1710 H Street, NW  
Washington, DC 20006

Donna Coleman Gregg  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Robert Lemle  
Senior Vice President/General Counsel  
Cablevision Systems Corporation  
One Media Crossways  
Woodbury, NY 11797

Brenda L. Fox  
Dow, Lohnes & Albertson  
1255 23rd Street, NW  
Suite 500  
Washington, DC 20037

Philp V. Permit  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Jacqueline P. Cleary  
Hogan & Hartson  
555 13th Street, NW  
Washington, DC 20004

Jeff Stoddard  
Director-Regulatory Affairs  
Times Mirror Cable Television  
P.O. Box 19398  
Irvine, CA 92713-9398

Howard J. Barr  
Pepper & Corazzini  
200 Montgomery Building  
1776 K Street, NW  
Washington, DC 20006

Thomas J. Ostertag  
Office of the Commissioner of Baseball  
350 Park Avenue  
New York, NY 10022

Jeff Treeman  
President  
United Video  
7140 South Lewis Road  
Tulsa, OK 74136-5422

Bruce A. Hennoch  
Arnold & Porter  
1200 New Hampshire Avenue, NW  
Washington, DC 20036-6885

  
Ann D. Berkowitz